
By: **Delegate Hammen**

Introduced and read first time: February 13, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Injury Recoveries - Attorney's Fees**

3 FOR the purpose of altering the definition of "health care provider" for purposes of
4 certain provisions of law relating to certain claims against health care providers
5 for medical injury; prohibiting an attorney from contracting for or collecting a
6 contingency fee in excess of certain limits for representing a person having a
7 claim against a health care provider for damages due to a medical injury
8 occurring on or after a certain date; providing that a division of fees may be
9 made between certain attorneys only under certain circumstances; providing
10 that an attorney who violates certain provisions of this Act is subject to
11 disbarment, suspension, or other disciplinary action; providing for the
12 application of certain provisions of this Act; defining a certain term; and
13 generally relating to health care malpractice claims and attorney contingency
14 fees.

15 BY repealing and reenacting, with amendments,
16 Article - Courts and Judicial Proceedings
17 Section 3-2A-01(e)
18 Annotated Code of Maryland
19 (2002 Replacement Volume and 2003 Supplement)

20 BY adding to
21 Article - Courts and Judicial Proceedings
22 Section 3-2A-07.1
23 Annotated Code of Maryland
24 (2002 Replacement Volume and 2003 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Courts and Judicial Proceedings**

2 3-2A-01.

3 (e) "Health care provider" means a hospital, a related institution as defined in
4 § 19-301 of the Health - General Article, AN ADULT DAY CARE CENTER, A HOSPICE
5 CARE PROGRAM, a physician, an osteopath, an optometrist, a chiropractor, a
6 registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed
7 certified social worker-clinical, and a physical therapist, licensed or authorized to
8 provide one or more health care services in Maryland. "Health care provider" does not
9 mean any nursing institution conducted by and for those who rely upon treatment by
10 spiritual means through prayer alone in accordance with the tenets and practices of a
11 recognized church or religious denomination.

12 3-2A-07.1.

13 (A) (1) IN THIS SECTION, "RECOVERED" MEANS THE NET SUM RECOVERED
14 BY THE CLAIMANT AFTER DEDUCTING ANY DISBURSEMENTS OR COSTS INCURRED IN
15 CONNECTION WITH PROSECUTION OR SETTLEMENT OF THE CLAIM.

16 (2) FOR PURPOSES OF THIS SUBSECTION, COSTS OF MEDICAL CARE
17 INCURRED BY THE CLAIMANT AND THE ATTORNEY'S OFFICE-OVERHEAD COSTS OR
18 CHARGES ARE NOT DEDUCTIBLE DISBURSEMENTS OR COSTS.

19 (B) AN ATTORNEY MAY NOT CONTRACT FOR OR COLLECT A CONTINGENCY
20 FEE FOR REPRESENTING A PERSON HAVING A CLAIM AGAINST A HEALTH CARE
21 PROVIDER FOR DAMAGES DUE TO A MEDICAL INJURY OCCURRING ON OR AFTER
22 JUNE 1, 2004, IN EXCESS OF THE FOLLOWING LIMITS:

23 (1) 40% OF THE FIRST \$200,000 RECOVERED;

24 (2) 33 1/3% OF THE NEXT \$200,000 RECOVERED;

25 (3) 25% OF THE NEXT \$200,000 RECOVERED; AND

26 (4) 15% OF ANY AMOUNT RECOVERED IN EXCESS OF \$600,000.

27 (C) THE LIMITATIONS ESTABLISHED UNDER SUBSECTION (B) OF THIS
28 SECTION APPLY REGARDLESS OF WHETHER:

29 (1) THE AMOUNT RECOVERED IS BY SETTLEMENT, AWARD, OR VERDICT;
30 OR

31 (2) THE PERSON FOR WHOM THE AMOUNT IS RECOVERED IS A
32 RESPONSIBLE ADULT, A MINOR, OR A PERSON WHO IS MENTALLY INCOMPETENT.

33 (D) A DIVISION OF FEES BETWEEN AN ATTORNEY WHO CONTRACTS FOR OR
34 COLLECTS A CONTINGENCY FEE SUBJECT TO THIS SECTION AND A REFERRING
35 ATTORNEY MAY BE MADE ONLY IF:

36 (1) THE ATTORNEYS ARE IN THE SAME FIRM; OR

1 (2) (I) THE DIVISION IS IN PROPORTION TO THE SERVICES
2 PERFORMED BY EACH ATTORNEY;

3 (II) THE CLAIMANT IS ADVISED IN WRITING OF AND DOES NOT
4 OBJECT TO THE PARTICIPATION OF THE REFERRING ATTORNEY;

5 (III) THE TOTAL UNDIVIDED FEE IS WITHIN THE LIMITS
6 ESTABLISHED BY THIS SECTION; AND

7 (IV) THE CLAIMANT'S ATTORNEY FILES WITH THE DIRECTOR AS A
8 PUBLIC RECORD:

9 1. WITHIN 90 DAYS FROM THE DATE OF THE COMPLAINT,
10 ALL WRITTEN COMMUNICATIONS OR AGREEMENTS RELATING TO THE DIVISION OF
11 FEES UNDER THIS PARAGRAPH, INCLUDING ALL WRITTEN COMMUNICATIONS OR
12 AGREEMENTS BETWEEN THE ATTORNEYS OR WITH THE CLAIMANT; AND

13 2. BEFORE THE FEE IS DIVIDED, WRITTEN CERTIFICATION
14 DESCRIBING IN DETAIL THE SERVICES PERFORMED BY EACH ATTORNEY, THE
15 AMOUNT OF TIME EXPENDED ON THE CLAIM BY EACH ATTORNEY, AND THE FEE TO
16 BE PAID TO EACH ATTORNEY.

17 (E) AN ATTORNEY WHO VIOLATES THIS SECTION IS SUBJECT TO
18 DISBARMENT, SUSPENSION, OR OTHER DISCIPLINARY ACTION IN ACCORDANCE WITH
19 TITLE 16, CHAPTER 700 OF THE MARYLAND RULES.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect June 1, 2004.